

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4430 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

KALLUBHAI LAXMINARAYAN TIWARI

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner
MR.NEEGAM SHUKLA,APP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was served on 26.4.1996 itself and since then the petitioner is under detention lodged at

Bhavnagar Jail, District Bhavnagar. The present Special Civil Application was filed in this Court on 27.6.1986 and on 28.6.1986 Rule returnable for 31.7.1996 was issued but so far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed.

The grounds annexed with the detention order show that two criminal cases under the Bombay Prohibition Act were registered against the petitioner. After taking note of the allegations in these criminal cases the Detaining Authority has noted that the petitioner is engaged in unauthorised business of import and sale of unauthorised liquor alongwith his associates. The petitioner is a known bootlegger in the area and is engaged in all sort of antisocial activities. The Detaining Authority has also taken into consideration the statements of four witnesses in support of the incident dated 16.4.1996 and 9.4.1996 wherein the petitioner has beaten the innocent persons, the witnesses had requested to keep their identity secret for the reasons of their security, being frightened and afraid of the petitioner and the Detaining Authority has invoked the provision of section 9(2) of the PASA Act. The Detaining Authority has also opined that the petitioner is a headstrong person and on account of his bootlegging activities he has become a problem for the public order and it was necessary to pass the detention order so as to prevent him from continuing his antisocial activities.

The detention order has been challenged on grounds more than one but the learned Counsel for the petitioner has laid stress on the argument that the allegations levelled against the petitioner even if taken to be true do not constitute a case of breach of public order and at the most it is a case of breach of law and order.

The reasoning given in the judgment dated 4.10.1996 in Special Civil Application No.3879 of 1996 by this Court apply with full force on the facts of this case and the impugned detention order which has been passed for reasons which are not germane to the consideration of breach of public order cannot be sustained in the eye of law because the allegations and the material relied upon by the Detaining Authority in the facts of this case show that it is at the most a case of breach of law and order.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City is

hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.
